

SIMON SMITH—HEIRS-AT-LAW OF.

[To accompany Bill H. R. No. 783.]

MAY 25, 1860.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

*The Committee on Invalid Pensions, to whom was referred the petition of the heirs of Simon Smith for arrears of pension alleged to have been due their father, report:*

That the committee have examined the papers in this case, and concurring in the opinion expressed in the report of the Committee on Pensions of the Senate at the second session of the thirty-third Congress, have adopted it as a part of their report:

*The Committee on Pensions, to whom was referred the petition of the heirs of Simon Smith for arrears of pension alleged to have been due their father, beg leave to report:*

That Simon Smith applied to the bureau for an invalid pension in 1837, upon a certificate of discharge, (which is also of record,) stating that he was disabled. But as the discharge and the return on the rolls omitted to state that the "disability was incurred in the service," his application was rejected.

In 1851, fourteen years after his first application, he succeeded in proving that his disability was incurred in the service while in the line of his duty, and thereupon was placed on the rolls at the rate of eight dollars per month, which he continued to receive up to the date of his death.

His heirs now pray for an act directing the payment to them of arrears for the fourteen years during which his case was suspended, on the ground that the officer who granted his discharge should have stated therein the fact that the disability was incurred in the service, in the line of duty; and that this omission on the part of the officer to do him justice should not have deprived him of his rights under the law.

The papers accompanying the petition fully sustain all the material facts alleged.

The committee are of opinion that the claim now presented ought in equity to be paid. The subsequent proof to the satisfaction of the

bureau that the disability was incurred in the service is also proof that the officer granting the discharge should have stated the fact, and thereby saved him the trouble and expense afterwards incurred to prove it. This omission deprived the said Smith of the pension to which he was justly entitled for fourteen years; and it seems to your committee that it was too stringent an administration of the letter of the law to make the patriotic soldier, whose health and strength are offered up in defence of his country, suffer the consequences of an error or omission of this character on the part of his officer. Had the discharge and return conformed to the truth, as subsequently established, his pension would have been granted at once on his first application in 1837. If justice and the obligations of gratitude would have awarded him these arrears when living, the sum is no less due to his children, who must in every case be more or less sufferers from the inability of a parent to pursue some occupation, whereby he may be enabled to educate them and afford them ordinary advantages in life.

But the claim of the heirs is made still stronger, by the fact that their father, who was unjustly deprived of his pension for fourteen years, did, in May last, (since which time he has deceased,) himself petition Congress to allow him these arrearages; and had your committee been permitted by their time and the state of the business before them to have acted upon his petition, they would undoubtedly have reported a bill for his relief. His death, in October last, does not affect the justice of the claim; if the arrearages were due him, they are, under the provisions of the general law authorizing the payment of arrears to the heirs or administrators, due to his heirs-at-law. The committee, therefore, herewith report a bill for their relief.